



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 11, 1996

Ms. Tamara Armstrong  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR96-1642

Dear Ms. Armstrong:

In Open Records Letter No. 96-0821 (1996), this office concluded that section 552.027 of the Government Code permitted Travis County to decline to accept or comply with a request for records that is submitted by an attorney for an individual who is imprisoned or confined in a correctional facility. After careful consideration, we hereby withdraw that ruling and replace it with this ruling.

Travis County (the "county") received a request for "all files, records and any other documents in the possession of the Travis County District Attorney's office pertaining to the arrest, investigation, and trial of Fran and Dan Keller, cause no. 91-4217 and 91-4220 in the 147th District Court of Travis County." You claimed that, as the requestor is an attorney who is requesting information on behalf of his clients, two inmates of the Texas Department of Criminal Justice, the county need not respond to the request pursuant to section 552.027 of the Government Code. In addition, you claimed that, if the county is required to respond to the request, the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.111 of the Government Code.

Section 552.027 of the Government Code provides:

(a) A governmental body is not required to accept or comply with a request for information from an individual who is imprisoned or confined in a correctional facility.

(b) Subsection (a) does not prohibit a governmental body from disclosing to an individual described by that subsection information held by a governmental body pertaining to that individual.

(c) In this section, "correctional facility" has the meaning assigned by Section 1.07(a), Penal Code.<sup>1</sup>

Gov't Code § 552.027 (as added by Acts 1995, 74th Leg., ch. 302, § 1)(footnote added).

By enacting section 552.027, the legislature intended to prevent inmates from using information obtained through the Open Records Act "to file bogus income tax returns on correctional officers, harass nurses at their home addresses, and send mail to the homes of Texas Department of Criminal Justice employees." Tex. Sen. Criminal Justice Comm., Bill Analysis, Tex. H.B. 949, 74th Leg., R.S. (1995)(quoting from "Background")(available through the Senate Research Center). Given the stated purpose of section 552.027, we do not believe that the legislature intended to prevent an attorney, who is subject to rules of professional responsibility, from requesting information on behalf of an inmate whom he is representing. Accordingly, we conclude that section 552.027 does not relieve a governmental body of its obligation to accept and comply with an open records request from an attorney who is making such a request on behalf of an inmate whom he is representing. Therefore, we must consider whether the requested information falls within the scope of the exceptions to disclosure that you have raised.

Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." This exception encompasses attorney work product created for litigation that tends to reveal an attorney's mental processes, conclusions, and legal theories. Open Records Decision No. 647 (1996) (copy enclosed). Moreover, when a person requests the entire litigation file of an attorney, the individual records in the file may be withheld under section 552.111. *Id.* You contend that the requested information consists of the work product of an attorney created for litigation. As the requestor here has requested the entire file regarding these cases, you may withhold the requested information in its entirety under section 552.111.<sup>2</sup>

---

<sup>1</sup>Section 1.07(a)(14) of the Penal Code provides:

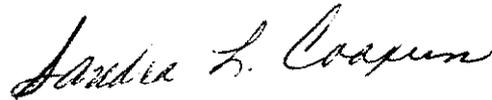
"Correctional facility" means a place designated by law for the confinement of a person arrested for, charged with, or convicted of a criminal offense. The term includes:

- (A) a municipal or county jail;
- (B) a confinement facility operated by the Texas Department of Criminal Justice;
- (C) a confinement facility operated under contract with any division of the Texas Department of Criminal Justice; and
- (D) a community corrections facility operated by a community supervision and corrections department.

<sup>2</sup>As we have concluded that you may withhold the requested records under section 552.111, we do not address your arguments under section 552.101 and 552.103.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Sandra L. Coaxum  
Chief, Open Records Division

SLC/rho

Enclosure: Open Records Decision No. 647 (1996)

cc: Mr. Michael B. Charlton  
Law Offices of Michael B. Charlton  
4515 Yoakum  
Houston, Texas 77006  
(w/o enclosure)

Mr. David A. Kahne  
Legal Director  
Civil Liberties Foundation  
P.O. Box 66386  
Houston, Texas 77266  
(w/o enclosure)